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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

23 CR 68 (JPO)

5 JEREMY JOSEPH,

6 Defendant.

7 -----x Sentencing

8 New York, N.Y.

9 April 23, 2024

11:00 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the

16 Southern District of New York

17 JAMIE BAGLIEBTER

DIARRA GUTHRIE

Assistant United States Attorneys

18 JEREMY JOSEPH

19 Pro Se Defendant

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1 THE DEPUTY CLERK: United States of America v. Jeremy
2 Joseph.

3 Starting with government, counsel, please state your
4 name for the record.

5 MS. BAGLIEBTER: Good morning, your Honor. Jamie
6 Bagliebter for the government, and with me at counsel's table
7 is AUSA Diarra Guthrie.

8 THE COURT: Good morning.

9 MR. JOSEPH: Jeremy Joseph, pro se.

10 THE COURT: Good morning. You all can remain seated.

11 Today we're scheduled for a sentencing hearing in this
12 case. Mr. Joseph pleaded guilty on November 29, 2023, to two
13 counts of threatening physical harm by interstate
14 communication. We talked at the last conference about
15 Mr. Joseph having received the presentence report, and having
16 an opportunity to submit any objections, and also whether he
17 had the materials he needed to prepare for sentencing.

18 I did sign an order on April 9 directing former
19 standby counsel at the Federal Defenders to make sure they
20 delivered another copy of the file, relevant documents, to
21 Mr. Joseph at MDC. And Ms. Lenox informed the Court by e-mail
22 the next day they had sent everything to him and would do it
23 again.

24 So Mr. Joseph, let me start by asking you if you've
25 received everything you need in terms of case-related

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documents.

MR. JOSEPH: So, update, no, I have not. With that said, I'm fine with proceeding with sentencing. There's still materials that I've not received. When we last had -- when we last were in court, I didn't have my legal notebook. I'm not sure how it got lost from MDC to here. But I was able to draft out the motions again that I was planning on submitting last time.

I still have not received the transcripts of all the proceedings. This wouldn't just include the trial and pretrial, but also the transcripts starting from day one when I first came to court. I need that for current and also future proceedings. I also have similar charges also in Eastern Texas. I have not received an update on that.

The second is motion to unseal this case. I've actually been talking to a few legal nonprofit groups, including a journalist, and one thing that would help in terms of getting some of these things going is actually unsealing the case just for legal transparency.

And also, I did receive some materials from the Federal Defenders. Once again, the file is incomplete. I've made a motion for sanctions against Federal Defenders, just because they haven't applied, as well as an exhibit outlining all the materials I do need. This would include work product, communication, subpoenaed materials, as well as legal materials

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1 that I was supposed to receive from lawyers that I just never
2 got.

3 With that said, I want to submit the motions.
4 Separate from that, I'm fine proceeding with sentencing.
5 Yesterday I got the final PSI. There still seem to be some
6 things that were outstanding, but I got the chance to go over
7 the materials. Right now I am not going to be objecting to
8 anything and I'm fine just getting it over with.

9 THE COURT: Getting what?

10 MR. JOSEPH: Getting the sentencing over with.

11 THE COURT: So, couple things. First of all, you
12 haven't sent a written submission relating to sentencing, have
13 you?

14 MR. JOSEPH: I have not.

15 THE COURT: Do you want to do that? I can give you
16 time to prepare one if you'd like.

17 MR. JOSEPH: That's okay. I do have an affidavit for
18 designation. I want to be designated at Fort Dix. There's a
19 couple reasons. It's got, from my understanding, jail
20 programming that fits my needs, and its close proximity to
21 friends that can visit.

22 But, outside the motions and the affidavit to be
23 designated to Fort Dix, I think I'm good and I can submit these
24 things formally to the Court.

25 THE COURT: You referred to a motion. What's the

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1 motion?

2 MR. JOSEPH: Yeah, there's three motions and I can
3 hand them over to the marshal who can give them to you and I
4 can file them in court. Right.

5 Motion to unseal the case, motion for the transcripts
6 of all proceedings, and then the motion for sanctions against
7 the Federal Defenders for not complying with the order to
8 provide my case file.

9 THE COURT: Okay. Do any of those motions or anything
10 else you indicated you haven't received relate to sentencing?
11 Is any of that anything you think would be helpful for
12 sentencing? Because if so, we can put this off.

13 MR. JOSEPH: No. So, I think it could be relevant,
14 but I don't think it's critical where it would change anything.
15 So I outlined things that are outstanding from the case file
16 that I've not received, but these are motions that can be ruled
17 on and are separate from sentencing. Like, the motions that I
18 am submitting today originally were supposed to be submitted
19 last time I got to court. The marshals aren't sure where my
20 legal notebook went. Even when I got back to MDC, they didn't
21 have it, so I redrafted them again.

22 THE COURT: So the case is not under seal. There are
23 certain -- the case is not under seal. The case is public on
24 the docket. There are certain redactions in certain filings.

25 MR. JOSEPH: Right. For the protective order.

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1 THE COURT: When you say under seal, you mean the
2 redacted portions?

3 MR. JOSEPH: Well, think that was removing the
4 protective order, but we already addressed that. From my
5 understanding the indictment was originally sealed, and so some
6 information wasn't available to the public. If it's unsealed
7 as of today, then the motion here isn't necessary.

8 THE COURT: It is unsealed.

9 MS. BAGLIEBTER: That's correct.

10 MR. JOSEPH: So then it would be the motion for the
11 transcripts of all proceedings. I still don't have those. And
12 I was hoping to get that directly from the Court, given I've
13 been unable to get those transcripts from the Federal
14 Defenders. Nor do I know if the Federal Defenders actually
15 have them in their possession.

16 THE COURT: All right. So, my first question is
17 whether you want those for sentencing. Because the purpose of
18 today is to determine an appropriate sentence, and I want to
19 give you a chance to address the issues that pertain to
20 sentencing. And if you think you need any of those transcripts
21 or other documents, I'm happy to put this off and give you a
22 chance to review that.

23 MR. JOSEPH: No. So once again, I want to reiterate
24 I'm fine proceeding to sentencing. I just want future legal
25 proceedings as well as current, because it will be helpful. I

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1 do want the transcripts as well as actually all the filings
2 that have happened in the case as well, though weren't included
3 in the case file.

4 THE COURT: Then I also want to address the issue of
5 objections to the draft presentence report. So under Rule 32
6 of the Federal Rules of Criminal Procedure, the probation
7 officer must give the presentence report to the defendant at
8 least 35 days before sentencing, unless the defendant waives
9 that period. So do you remember when you first received the
10 presentence report?

11 MR. JOSEPH: I received it about maybe two-and-a-half
12 weeks ago, but I recall when we came to court last time that I
13 waived the time requirements for receiving the PSI as well as
14 sending an objection.

15 THE COURT: And again, the purpose of that is
16 obviously the -- you've now read the presentence report, right?

17 MR. JOSEPH: It was delivered to me. Just to be on
18 the record, I received it yesterday. Prior to recall, I was
19 given about five minutes to go through it. I was not -- I'm
20 not able to hold onto it. So I was able to review it, there
21 didn't seem to be any changes from the draft. So at this point
22 I have no objections.

23 THE COURT: But when you saw the initial draft, were
24 you able to have enough time to read it?

25 MR. JOSEPH: I glanced through it. It didn't look

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1 like there were any changes from the draft so, yeah, no
2 objections.

3 THE COURT: But just to be clear, have you read it?
4 Do you need more time to read it?

5 MR. JOSEPH: No, I don't need more time.

6 THE COURT: And again, you have a right to have 35
7 days before sentencing with the presentence report. Do you
8 want that additional time? I'm happy to give you that
9 additional time.

10 MR. JOSEPH: I've waived the time requirement.

11 THE COURT: Do you --

12 MR. JOSEPH: And I don't want the time.

13 THE COURT: You don't want the time. Same with
14 objections. Are there any objections you want to make orally
15 today or in writing?

16 MR. JOSEPH: Not right now.

17 THE COURT: Anything the government wants to add sort
18 of preliminarily about these issues?

19 MS. BAGLIEBTER: No, your Honor. I think the Court
20 has sufficiently inquired of the defendant that he has had the
21 opportunity to read and review the PSR. To the extent, while
22 there may not be changes between the initial and the final PSR,
23 of course the final PSR includes additional information
24 including probation's recommendation. So, if the defendant has
25 not had sufficient time to review that piece of information,

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1 perhaps we could either give him that time now or confirm that
2 that's okay.

3 THE COURT: So, the final version, last few pages is a
4 recommendation section from the probation department. And they
5 recommend a particular sentence. In this case they recommend a
6 sentence of imprisonment of 30 months, which is the bottom of
7 what they regarded as the guideline range, as well as 3 years
8 of supervised release. And then they had an explanation of
9 that.

10 Did you have a chance to see that?

11 MR. JOSEPH: I did.

12 THE COURT: Do you need any additional time to go over
13 that?

14 MR. JOSEPH: No, I don't.

15 THE COURT: Do you feel okay today to proceed with
16 discussing issues relating to an appropriate sentence?

17 MR. JOSEPH: I do.

18 THE COURT: I do find the defendant has waived the
19 time requirements of Rule 32 with respect to the presentence
20 report, that he's chosen not to file written objections and a
21 written submission relating to sentencing.

22 So we'll go forward with sentencing today, which I
23 believe is the defendant's wish. I asked him about objections.

24 I'll ask the government. Ms. Bagliebter, does
25 government have any objections after reading the presentence

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1 report?

2 MS. BAGLIEBTER: No, your Honor.

3 THE COURT: So, I adopt the facts set forth in the
4 presentence report as my findings of fact for sentencing, which
5 findings must be made by a preponderance of the evidence at
6 sentencing. Of course I've reviewed the presentence report
7 with the addendum and sentencing recommendation, final version
8 dated April 16, 2024, the government's submission dated
9 April 19, 2024, and I've also read the two days of trial that
10 we had, the transcripts of that, and the allocution of the
11 defendant when he pled guilty on November 29, 2023.

12 So the starting point in sentencing is the sentencing
13 guidelines, which is a base offense level on one side and a
14 criminal history category on the other side.

15 Just to be clear, Mr. Joseph, you're familiar with the
16 sentencing guidelines?

17 MR. JOSEPH: I am.

18 THE COURT: Have you seen this chart?

19 MR. JOSEPH: I have.

20 THE COURT: The chart has the criminal history
21 category on one side and a number on the other side, which is
22 the offense level. So, the first thing I need to do is to
23 calculate what the right offense level is. Now, the
24 government's submission goes through and agrees with the
25 presentence report calculation. I think I have one question

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1 about that.

2 The base offense level is 12 under Section 2A6.1 of
3 the guidelines, given this offense. Because two or more
4 threats were involved, there is an increase of two points under
5 2A6.1(b)(2).

6 And then the next question is under 3A1.1(a), is there
7 an additional three points which applies if the Court finds
8 beyond a reasonable doubt that the defendant intentionally
9 selected the victims because of their religion or actual or
10 perceived religion in this case. And I know the government
11 explained their view that those three additional points should
12 be added. Anything you want to add on that?

13 MS. BAGLIEBTER: No, your Honor. We are happy to
14 answer any of the Court's questions with respect to that issue,
15 but we do think the enhancement applies here.

16 THE COURT: Mr. Joseph, do you want to address that?

17 MR. JOSEPH: I don't.

18 THE COURT: So I will ask the government questions
19 about that. That is known as the hate crime enhancement. And
20 it's certainly true the threats in this case involved
21 antisemitic language. The two victims at issue in this case
22 were Jewish, and there was antisemitic language in the
23 threatening communications.

24 However, I'm not sure I can find beyond a reasonable
25 doubt that the defendant selected the victims because of their

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1 religion, which is a very specific definition of hate crime in
2 the sentencing guidelines, and it also requires a finding
3 beyond a reasonable doubt, which is unlike most other
4 provisions of the guidelines.

5 And the reason I say that is because when you look at
6 all the evidence in the case, which I reviewed, there is
7 antisemitic language to others, and the people who received
8 these threats were people that the defendant had a connection
9 with. They're people he knew. The Morgan Stanley people he
10 worked with a decade ago are the victims in this case. There
11 is antisemitic language sent to the Texas probate judge who he
12 obviously had a connection to through the case out there.
13 There's also lots of other hateful language, white trash, you
14 know, derogatory language based on a Latino status, the N word
15 multiple times, homophobic language. So there's lots of kind
16 of undifferentiated broad hateful language, and that is
17 disturbing and I think it's culpable conduct and I think it's
18 harmful in the way that hate speech is harmful.

19 But on the question whether he selected the victims
20 because of their status as Jewish or perceived status as
21 Jewish, I don't know that I can say beyond a reasonable doubt
22 that he did, as opposed to sort of opportunistically coming up
23 with hateful language about the various people, in many cases
24 who turned out to be victims, but who were essentially people
25 he had a connection to.

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1 So that's the question I have, if you'd like to
2 address it.

3 MS. BAGLIEBTER: Thank you, your Honor. I would like
4 to address it.

5 I think what your Honor is grappling with makes sense
6 and I appreciate the perspective of the Court. I think there
7 are a few problems with seeing the analysis and seeing the
8 enhancement of a hate crime or seeing the application of the
9 hate crimes enhancement limited in the way that you suggest.
10 Here's the things that I think are too limiting.

11 One, by saying that the hate crimes enhancement does
12 not apply because Mr. Joseph knew these individuals suggests
13 that you can only be selecting your victim -- it has to be a
14 stranger that you see wearing some indication or advertising in
15 some way or because of their color of their skin, showing they
16 are a member of this protected class, and you target them only
17 for that basis. That's not my understanding of what the
18 standard is. It does need to be because of their membership in
19 that protected class, here as members of the Jewish faith or
20 the perception that they are. But it doesn't need to be the
21 only reason. And in most places in our law where we have a
22 because standard or a but-for standard, it's not the only.
23 It's one, it can be one, it can be a significant motivating
24 factor, but it's not the only.

25 And so here, the question is not to me whether they

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1 were selected only because of their religion or because he had
2 these grievance against them. But rather, did the grievances
3 that he have elevate to the point where they became targets of
4 these threats, in part because of their religion and his hatred
5 towards that group.

6 And I think what the Court has to look at to make this
7 beyond a reasonable doubt finding is the defendant's own words
8 and the frequency of those words. And so, when the defendant
9 is targeting them, he is using their membership or perceived
10 membership in this group to elevate the harm that he is
11 bringing to them. And so the Court has to wonder, well, why
12 did these victims -- why did these people who have wronged him
13 receive these threats. And I think he's telling the Court why
14 they received these threats. His own words, what he chooses to
15 say to them, is what is going through his mind at the time he's
16 sending these death threats.

17 As we laid out in our submission, he identified these
18 individuals as Jewish from when he was first complaining about
19 them years before the death threats happened. And then his
20 grievance against them maintained and festered, and now we are
21 talking 12 years later. Why come back to these people? And if
22 he was devoid of this hate towards this group, would these
23 people still be in his mind? Would he still be saying the
24 things that he's saying?

25 Look, we can't go inside of his mind. He's had the

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1 opportunity to represent otherwise to the Court and has not.
2 So we have to look at what we have. And we have over and over
3 again him choosing to use hateful language about their Jewish
4 identity to attack them.

5 So, I don't know why he's still thinking about them
6 12 years later. But it looks to me, based on the words that
7 he's saying, over and over again, that it has to do with their
8 Jewish identity that they have stuck out in his mind. And that
9 suggests that, in part, because they are Jewish, he felt that
10 they -- they remained in his mind, his grievance against them
11 remained in his mind, and they were targeted in this instance.

12 Then your Honor also mentions, well, it's not just
13 them that received these threats, but it's all these other
14 individuals that he also uses antisemitic language. To me,
15 that is evidence in favor of the fact that he was selecting
16 victims, not just the statutory victims in this case, but part
17 of his broader pattern of conduct, he was selecting victims
18 based on their membership in these groups, and specifically a
19 Jewish identity.

20 THE COURT: But, sorry to interrupt. Those are all
21 very good points, but there is also counterexamples where
22 people, like DCVC, if that's the name of the entity, colleagues
23 there where it was just a white non-Jewish woman, he would use
24 a word like white Barbie or something. That's why I say
25 opportunistic. It feels like he had grievances of various

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1 people, and when there was a pertinent hateful characteristic,
2 a relevant characteristic as to which he could use hateful
3 language, he did. But were they selected because of that
4 status.

5 MS. BAGLIEBTER: On DCVC in particular, it is worth
6 noting one of his primary targets was Jewish and was receiving
7 threats containing antisemitic language.

8 Now, without a doubt, there are other people who come
9 into the orbit of his threats, that if they're part of another
10 protected class, they get a different piece of hateful
11 language. And if not, they get something more generic like a
12 white Barbie. It is not like his hate is exclusively to people
13 in these classes. That's not the standard. The standard is
14 not did he send death threats to anyone else. It's were these
15 victims in some way selected because of their protected class.
16 I do think we see a frequency of Jewish targets in his
17 behavior.

18 Also in some of the filings that are more generic,
19 facing hundreds of people, you see the heil Hitler language,
20 you see the language that is antisemitic in nature and being --
21 which is sort of elevating the antisemitic language over some
22 of the other threats that we see.

23 Now, to go to your other point, your Honor, which I
24 think you touch on here, yes, he is using hateful language
25 about other minority groups as well. But I don't think that

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1 that is mutually exclusive to him selecting a victim because of
2 their identity as part of the Jewish minority. If there is
3 wider spread hate towards various groups, various minority
4 groups, and he's using hateful language towards all of them, I
5 don't have the research on this, but I think there is probably
6 some instances where there's sort of co-morbidity for lack of a
7 better word, and there is hate towards more than one protected
8 class, and that's conveyed over and over again.

9 So I don't see that, again, I don't see that as taking
10 away the idea he is selecting them because of their Jewish
11 identity, but maybe suggesting that he selects these victims
12 because of their membership in the Jewish faith, and other
13 victims because of their membership in other minority groups,
14 and he feels hate towards that as well or he sends those
15 messages with those hateful messages.

16 Look, I appreciate that there is no question that
17 there is another motivating factor here, which are these
18 personal grievances he has. But to ignore the hateful language
19 that is very focused and antisemitic and repetitive over and
20 over again, even for victims who weren't in fact Jewish. For
21 example, the California intake attorney was not, but she says
22 she is often mistaken for a Jewish person from her last name,
23 and it was clear from those e-mails that there was a focus with
24 the references to Auschwitz, the questions about whether his
25 previous lawyers he had worked with was Jewish, there was this

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1 pervasive discussion of an identity with the Jewish faith that
2 comes up over and over again, that we see sort of elevated
3 above with many of the victims that he's targeting, actual or
4 perceived.

5 And so I do think it meets the beyond a reasonable
6 doubt standard even though -- because otherwise, any time you
7 had another reason, or you had a grievance against someone that
8 maybe was more impactful on you because of your hatred towards
9 this member of this protected class, you would not be able to
10 apply the enhancement.

11 THE COURT: I don't know if that's true. I take your
12 point that the hateful language should not be ignored, and I'm
13 not suggesting it should be. I'm just wondering whether this
14 situation establishes beyond a reasonable doubt that they were
15 selected because of their status as Jewish.

16 And I guess it seems to me the standard might be
17 something like the counterfactual, consider that he had exactly
18 the same situation, he had a difficult experience with them a
19 decade ago working at Morgan Stanley, and imagine neither one
20 was Jewish, but everything else in the world was the same. And
21 he had bad experience there, later says he has PTSD about it,
22 and then would he, in the context of all these communications
23 he's sending at this time, would he have selected them to
24 receive some of them? Now, admittedly, they would be different
25 because they wouldn't perhaps have the antisemitic language.

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1 But if they still had been selected, then I'm not sure 3A1.1
2 applies.

3 MR. JOSEPH: Can I interject because you're talking
4 about me.

5 So, one, I think this is a lot of speculation. Two
6 is, I think we are going to put things on the record, just make
7 sure they're correct.

8 While I did have issues at Morgan Stanley with these
9 two employees, the references even later are usually through
10 FBI intakes, notes that had been provided to the FBI. Because
11 not only was my identity stolen, but I was receiving threats
12 myself. And every time the FBI asked me, either on the phone
13 or in person, these people who are comprising your accounts or
14 targeting, who do you think could be the potential assailants.
15 I was at a loss, and I said I think the only people that I have
16 a major issue with in the past were these two people.

17 In those intakes you don't see any reference about the
18 Jewish faith, and any of the e-mails that actually I had with
19 these two victims, there was never any mention of their Jewish
20 faith as well.

21 And I'm thinking of what else the prosecutor has said
22 that references me referencing them about them being Jewish
23 over the last 13 years, I don't see it. I never got the entire
24 case file from Houston. I never got any of the e-mails from
25 Morgan Stanley as well as the HR records of David Friedman and

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1 Sara Slifka.

2 So while you can make an argument, I at least wish you
3 would stay within the bounds of it being fact. While I pled
4 guilty to these two e-mails, you are talking about a lot of
5 things that are referencing other e-mails which I don't know if
6 those are charges, but you can't say that because I've pled
7 guilty to these e-mails that I'm now responsible for
8 everything. The things regarding probate court, I wanted to
9 subpoena him. I was unable to. I didn't even get all the
10 materials from that probate court. I had a list of witnesses
11 that I wanted from the court, and I want to remind the Court I
12 wasn't able to have any witnesses. I had a list of 30 people
13 that I was hoping to subpoena, some including Jewish people who
14 are my friends and who could have accounted for things I've
15 said and done, and I had not one.

16 And considering I had this prepared three months ago
17 and I had zero witnesses, with subpoenas, there is just a lot
18 of things missing. So to speculate on things that aren't
19 factual, I think is just jumping ahead.

20 THE COURT: Let me back up. You talked about FBI
21 reports. We are not talking about FBI intake reports. We are
22 talking about the e-mails that you pled guilty to. And one of
23 them says --

24 MR. JOSEPH: Right. You are also referencing --

25 THE COURT: -- top it off, I actively hate Jews now.

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1 Seriously hate them and you. I understand why the Nazis wanted
2 you people dead now.

3 Did you write that?

4 MR. JOSEPH: No.

5 THE COURT: You pled guilty to it.

6 MR. JOSEPH: I did.

7 THE COURT: So you're saying you weren't guilty?

8 MR. JOSEPH: I didn't have any witnesses. Right. You
9 said it was okay not to have any witnesses.

10 THE COURT: Well, we never got to your case because --

11 MR. JOSEPH: I had no witnesses. You stopped Monday.
12 You said I could not call any more witnesses.

13 THE COURT: I already accepted your guilty plea. You
14 admitted to that.

15 MR. JOSEPH: Fine.

16 THE COURT: So, do you want to respond to the specific
17 issue about selecting people because of their religion?

18 MR. JOSEPH: No.

19 THE COURT: Okay.

20 MS. BAGLIEBTER: So your Honor, I would just say we
21 need to be limited to what's in the record, what's in the PSR,
22 what the government can proffer to. So claims of what may or
23 may not have been included in FBI intake is not within the
24 scope of what the Court should be considering here.

25 What we can consider is what we know from the e-mails,

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1 and as we said in our submission, between things that he's said
2 to his close friends who have testified in court, between the
3 language in the probate court filing, which is what starts this
4 in the summer of 2022, which includes the antisemitic language,
5 through the death threats to these particular victims, and in
6 the broader course of conduct.

7 So in every category of evidence in this case, we see
8 the pervasiveness of this antisemitic language. So to address
9 the Court's counterfactual of if these individuals weren't
10 Jewish, would they have still been a target of his ire 12 years
11 later, I think looking at what we know, I think the answer to
12 that is no.

13 He claims to have the PTSD, but remember the record is
14 devoid of actual things that could have reasonably justified
15 that grievance. So, he was terminated from his employment, but
16 that was it. And there was no evidence in the record of them
17 targeting him in any way, or keeping him from other
18 professional opportunities --

19 MR. JOSEPH: -- I did flag issues at Morgan Stanley
20 and discrimination --

21 MS. BAGLIEBTER: If I may continue uninterrupted and
22 then of course Mr. Joseph can have an opportunity to respond.

23 Then with DCVC and individuals he targeted, which one
24 of them primarily was an individual who was Jewish, you have
25 what happens is he gets this review, he gets this review as

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1 Mr. Hamer testified to, which was sort of commonplace for
2 people who needed some assistance, and then some individuals
3 get really drastically targeted. So, there is not a reasonable
4 basis for the kind of decade-long hold of grievances, so we
5 can't look to that as an explanation for why these particular
6 individuals are held on to.

7 And on the other side of the ledger we have the
8 language that he's using over and over again.

9 So I do think that that shows beyond a reasonable
10 doubt. And had we continued before the jury, I think the jury
11 would have been looking at this, and of course now it's in the
12 Court's view to propose it. But, we are, without the defendant
13 stating otherwise, and even with that I think we would have to
14 question what the value of that was, but this is what we have
15 to rely on, and this is a record beyond a reasonable doubt that
16 the victims were in part identified and selected because of
17 their actual or perceived membership in this class.

18 THE COURT: I will say, we did some research on this,
19 and there is not much that talks about the mixed motive issue
20 or what exactly the standard is. The courts seem to apply the
21 actual language which is they were selected because of the
22 prohibited characteristic. And there is one case *Carlineo*,
23 where the Second Circuit refers to what District Judge Geraci
24 did, but doesn't approve it or reject it, but just notes that
25 the Court rejected the three-level hate crime motivation. And

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1 this was threats to Congresswoman Omar, and the judge said that
2 Carlineo's use of the word Muslims -- did use the word Muslims,
3 but could not find beyond a reasonable doubt that the defendant
4 targeted her on account of her Muslim religion, even though she
5 used the word, as opposed to political beliefs. That's an
6 example.

7 And I think you make very good points. I think if the
8 standard were preponderance, it might be different. I don't
9 think I can find beyond a reasonable doubt that they were
10 selected because of that. I think you make a very good point.
11 10 years earlier, he had grievances, it was a bad experience,
12 he might have still targeted them, he might not have, but I
13 don't think I can say that beyond a reasonable doubt their
14 religion made a difference.

15 I will say that affects the guidelines, but it doesn't
16 affect culpability. I think it would be totally reasonable if
17 3A1.1 were written with a broader notion of a hate crime
18 enhancement that wouldn't be based solely on selecting the
19 victims because of that.

20 So, Mr. Joseph, anything you want to add on that
21 point?

22 MR. JOSEPH: No.

23 THE COURT: Anything else on the guidelines?

24 MR. JOSEPH: No.

25 THE COURT: So for the reasons I've just explained, I

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1 think it's a close question, but I think given that the
2 standard is beyond a reasonable doubt, I cannot find beyond a
3 reasonable doubt that the defendant intentionally selected
4 these two victims because of their religion. And therefore,
5 the adjusted offense level is 14, but after a multiple count
6 adjustment, it becomes 16. The criminal history of course is
7 I, and that results in a guideline range of 21 to 27 months
8 under the guidelines. Of course that's advisory, it's not
9 binding. Probation recommends 30 months, but that's on the
10 assumption that a different guideline range applies.

11 So I'd like to give each of you an opportunity to
12 speak. I've read the government's submission and obviously the
13 presentence report. And anything the government would like to
14 add?

15 MS. BAGLIEBTER: Yes, your Honor. I think I'll start
16 with the point that your Honor raises, which the hateful
17 language and the hateful language targeting members of the
18 Jewish community does still have relevance from a 3553(a)
19 factor, and that's important to think about. Because the hate
20 crime enhancement was created, and perhaps your Honor is
21 correct that it could have been written in a lot of different
22 ways, but it still reflects an attitude that crimes that target
23 a particular group of people have increased harm, and that
24 needs to be accounted for in fashioning a sufficient but not
25 greater than necessary sentence.

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1 And in this case, the hateful language against the
2 Jewish community as well as other communities, as your Honor
3 noted that are targeted here, not only do the selected victims
4 feel that pain, but other people who are members of those
5 groups who see the filings on the e-filing system or who are
6 made aware, colleagues of theirs who are made aware that these
7 e-mails come through the system targeting their place of work
8 and are focused on the membership of being a part of the Jewish
9 community, that's going to impact those people differently. It
10 makes it scary to walk down the street. It makes it scary to
11 show your identity. And Congress has recognized that, and it's
12 a powerful 3553(a) factor.

13 And it's important also in considering the importance
14 of general deterrence, because the harm is so great, and
15 individuals who are going to engage in criminal conduct and
16 link that criminal conduct towards victims or have that
17 criminal conduct related to their victims' membership, even if
18 you don't view it as because of, but related to their victims'
19 membership in a particular religious, racial, ethnic group, a
20 message needs to be sent that that conduct will be recognized
21 as an aggravating factor.

22 A few other things I'd like to highlight in addition
23 to the government's submission, which I know the Court has
24 reviewed. And the first is I want to talk about the victims
25 again. Because at sentencing there is often a heavy focus on

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1 the life and the circumstances of the defendant, and of course
2 that makes sense. But the victims are also a really relevant
3 player here. And in fashioning the sentence, thinking about
4 how a crime has impacted the victim is important to a lot of
5 the 3553(a) factors, including just punishment for the offense.

6 And here, the victims in this case, their lives were
7 completely unended because of absolutely no fault of their own.
8 They had to suffer through months and years of fear, that's
9 permeated their lives and the lives of their family and their
10 colleagues and their neighbors and others. These death threats
11 are not just a press of a button and it's over. The ripple
12 effect of the harm that's created when that send button is
13 pressed is really significant. And so just punishment for that
14 kind of offense would really need to take that into
15 consideration.

16 This happened to these victims for no other reason
17 than they were unlikely enough to have crossed paths with the
18 defendant professionally and have upset him in some way. And
19 because of that, they've had to take real steps that have
20 changed their lives in terms of protecting themselves and their
21 families and trying to feel safe.

22 Your Honor heard during trial from one of the two
23 statutory victims in the case. Had the trial continued, the
24 Court would have heard from the other victim. This was a
25 horrible experience that had really lasting effects for them

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1 and the other victims of the defendant's broader pattern of
2 conduct. They were similarly traumatized by the defendant's
3 conduct.

4 Your Honor heard from the victim from DCVC who you
5 referenced earlier. He relocated his family. Think about what
6 a huge -- not just inconvenience, but how afraid you have to be
7 to move your whole family and your life because you don't feel
8 safe.

9 Another one of the government's witnesses who started
10 but didn't finish her testimony, you know, she was expected to
11 testify that she's had difficult time finding stable housing
12 since this has happened. Because she won't -- she won't live
13 anywhere with her own name. So she has had to create this
14 whole system of ways to mask her identity, because she feels so
15 afraid.

16 Your Honor, we also had someone slated to come testify
17 who was a prosecutor who loved their job, and after 10 years in
18 the job, quit in part because they felt so overwhelmed by being
19 targeted by the defendant.

20 These are real life-changing events that happened.
21 These victims are never the same.

22 And so, while in some ways the defendant may argue or
23 you could think of this as, oh, it's just these e-mails just
24 get sent and no one takes them seriously. But they are really
25 being taken seriously, and the reason you know they are going

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1 to be taken seriously is look at how egregious the language in
2 these e-mails are. This is not hyperbole. It is not puffery.
3 It is specific.

4 You heard the victims testify about what was so
5 terrifying about it was, you know, their pets were mentioned,
6 family medical issues were mentioned, specific things about the
7 offices and where they're located and how they look. That is
8 terrifying to know that someone is thinking about these
9 personal details about you, and then making these incredibly
10 graphic, horrific, realistic death threats.

11 And so, I know the government talks about it in its
12 submission, but I think it cannot be underscored enough what
13 sits on the other side. The impact that this has had for the
14 victims.

15 And I've mentioned general deterrence a little bit,
16 but I do think it's also worth mentioning specific deterrence
17 as well and the importance of that. It is correct that the
18 defendant has pled guilty to his crimes. But there is no
19 showing of remorse or concern about these victims. There is no
20 way for the Court to have comfort that the defendant will not
21 escalate his grievances against the next set of people in the
22 same way.

23 And so, from a specific deterrence purpose, I think
24 it's very important for the Court to fashion a sentence that
25 shows if you make a choice like this, these are the

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1 consequences that result from it. Because without that those
2 consequences and without that accountability, I don't think we
3 have any indication that this conduct would stop.

4 So for those reasons and those discussed in our
5 submission, the government thinks that a guideline sentence --
6 and appreciating that the Court has adjusted the guidelines,
7 still believes that a sentence approximately where probation
8 had placed it is appropriate here because this is really
9 serious conduct.

10 THE COURT: I just wanted to ask one question. Are
11 there pending charges in other jurisdictions?

12 MS. BAGLIEBTER: There is a pending federal case in
13 the Southern District of Texas, and when the defendant was
14 arrested, and then he waived his extradition, there was an
15 arrest warrant both from our office and from the Southern
16 District of Texas. So it is my understanding -- I've reached
17 out to the Southern District of Texas, I don't have an update,
18 but it is my understanding he will have to appear there and his
19 case will now proceed in Texas.

20 I can say that the indictment in Texas, the large
21 majority of -- certainly the statutory e-mails here are not
22 part of the Texas case, of course. But the e-mails relating to
23 DCVC, the e-mails relating to the California intake attorney,
24 that is also not part of the indictment in the Southern
25 District of Texas case, just to the extent that's relevant to

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1 your Honor.

2 THE COURT: What is relevant? What does that cover?

3 MS. BAGLIEBTER: It covers, based on the indictment,
4 it covers a set of e-mails, I believe they were sent on
5 January 22, 2023, so still part of the same time period, the
6 same two-month time period. It focuses more on the threats in
7 the Harris County probate court system. It includes, I believe
8 the first count in that case is one of the e-mails that Michael
9 Devitt spoke about which references things in Harris County,
10 but it wasn't a direct threat to Mr. Devitt. And then there's
11 a threat that was to ABC News and some news outlets in Texas.
12 And then the other ones are very similar in nature, but not the
13 ones that were specifically admitted into evidence at trial.

14 THE COURT: Is it the same charges?

15 MS. BAGLIEBTER: Four count of 875(c).

16 THE COURT: Are there also pending charges in Canada
17 and/or San Francisco?

18 MS. BAGLIEBTER: So there was a case in Canada, and I
19 think that case is still pending, but I don't know. I think
20 that they had sort of left it open at the time that he waived
21 extradition and came here. And in San Francisco it's related
22 to -- it is a non-threats related issue, and it is an arson
23 charge.

24 THE COURT: That's still open as well?

25 MS. BAGLIEBTER: I believe so.

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1 THE COURT: Thank you.

2 Mr. Joseph, anything you'd like to add before
3 sentencing?

4 MR. JOSEPH: No. Like I said before, I hadn't
5 received the Houston case file. I realize there is additional
6 charges in Houston. I realize that the charges were not
7 merged. So there is another opportunity to be sentenced longer
8 in Houston.

9 THE COURT: But do you want to argue for what the
10 sentence should be here?

11 MR. JOSEPH: No.

12 THE COURT: All right. And you said you wanted to
13 present some motions?

14 MR. JOSEPH: Yes, just to file with the court I spoke
15 about earlier.

16 THE COURT: We can take those. These don't relate to
17 the sentencing, is that right?

18 MR. JOSEPH: No. There is an affidavit for
19 designation at Fort Dix.

20 THE COURT: Okay.

21 MR. JOSEPH: But from -- I guess it would be an open
22 question considering I have open charges in Houston, whether or
23 not I will be going to Fort Dix or any other place, or if I
24 would be transferred directly to Houston. It doesn't seem like
25 the DoJ knows the answer to that.

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1 THE COURT: Do you know anything about the timing, the
2 usual timing of that?

3 MS. BAGLIEBTER: I don't. In terms of his
4 designation, I think my assumption base is BOP would not
5 designate him if he was going to be sent to Texas first, and he
6 would go to Texas. I believe there is a detainer for him, so
7 at the time that he's slated for -- if Texas doesn't writ him
8 to Texas sooner, at the time that he would be set to release, I
9 believe the detainer would have him transferred to the Southern
10 District of Texas. My expectation is if there is a period of
11 time after today that he's still incarcerated on these charges,
12 that Texas could writ him to Texas sooner and start their case
13 against him there. And then my assumption is they would
14 designate him after both of those cases had concluded. But
15 it's possible that BOP would do it differently.

16 THE COURT: You've asked for a designation to Fort
17 Dix, Mr. Joseph, due to you said programming and proximity to
18 friends. Is that right?

19 MR. JOSEPH: Correct.

20 THE COURT: Have you had mental health treatment while
21 at MDC?

22 MR. JOSEPH: Right now, I'm a suicide watch companion.

23 THE COURT: Did you say you are a companion?

24 MR. JOSEPH: I am a companion.

25 THE COURT: You are.

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1 MR. JOSEPH: So, I did a general psych review with
2 them. I was fine with that. I've done psych reviews with the
3 prison psychiatrist after the arson charge and after my mother
4 died. And I was experiencing discrimination at DCVC, and then
5 I saw a therapist for about a couple of years before they broke
6 off and I went to Canada.

7 But in general, at MDC I've done the psych review that
8 was a check, and then I became suicide watch companion.

9 THE COURT: I mean, MDC doesn't have the best
10 programming because it's primarily a pretrial facility. I
11 would like to have you get the most mental health treatment,
12 both an evaluation and whatever intensive treatment they can
13 give. I'm not sure what facility has that, but I think some
14 facilities have better programming for intensive mental health
15 treatment than others. So I was going to make the
16 recommendation that you be designated to a facility that has
17 robust mental health treatment.

18 Is there anything you want to say about that?

19 MR. JOSEPH: My understanding is Fort Dix does have
20 that as well as programming to get back into the world.
21 There's trauma programming as well as mental health for
22 recovery after trauma. That's what attracted me to Fort Dix.
23 And then also the close proximity to my friends who can visit.

24 THE COURT: All right. Anything else anybody wants to
25 add before sentencing?

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MS. BAGLIEBTER: Not from the government.

THE COURT: Anything else, Mr. Joseph?

MR. JOSEPH: No.

THE COURT: In preparing to sentence defendant, I've considered the presentence report, the recommendation of probation, and the statements of the defendant and the government, and I've considered all the factors in 18 U.S.C. Section 3553(a), which is the law that governs sentencing. And I'm required to consider a bunch of factors: The nature and circumstances of the offense, the defendant's history and characteristics, and the purposes of sentencing, the need to reflect the seriousness of the crime, to promote respect for the law, provide just punishment, afford adequate deterrence to criminal conduct, protect the public, and to provide any needed training or treatment to the defendant in the most effective manner. And of course I'm required to consider the sentencing guidelines.

I'm ultimately required to impose a sentence that is sufficient, but not greater than necessary, to comply with the sentencing purposes in the statute.

The defendant sent death threats to two of his former colleagues in December of 2022 and January of 2023. These death threats were filled with antisemitic language and other hateful language. They included personal details about the victims as well as photographs of weapons, and they contained

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1 details about how and when he intended to kill the victims. In
2 the short, these threats were intended to terrify and terrorize
3 the victims, and they did.

4 As Ms. Bagliebter has pointed out very well, I think
5 this was harmful conduct and it was conduct that really did
6 terrify the victims. This was part of a pattern of threats by
7 the defendant against many other people he had interacted with
8 over the years. The defendant's conduct caused real harm. As
9 I said, it terrified the victims and caused immeasurable
10 distress and anxiety, and that was heightened by the nature of
11 the threats, the level of pure hatred, and the detail in the
12 threats.

13 The purposes of reflecting seriousness of the crime,
14 promoting respect for the law, providing just punishment,
15 assuring adequate deterrence, and protecting the public require
16 a sentence that is serious. As I said, the guidelines call for
17 a sentence of 21 to 27 months. Certainly not unreasonable,
18 given the seriousness of the conduct here. If anything, that
19 range may understate culpability in some ways because of the
20 hateful nature of the threatening communications.

21 As I indicated, although I'd found that the hate crime
22 enhancement does not apply, the conduct was more harmful, and
23 the defendant is more culpable, given that the communications
24 expressed bigotry and hate.

25 I'm also required to consider the history and

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1 characteristics of the defendant. He has a history of
2 substance abuse, mental health challenges, and other personal
3 circumstances, including abuses that in some ways are
4 mitigating and may explain why he's in the position he's in.

5 One of the purposes of sentencing is to provide
6 treatment in the most effective manner. And I think even
7 though I found Mr. Joseph competent to stand trial, competent
8 to represent himself, I do think that he has mental health
9 challenges, and I think that treatment that is intensive and
10 effective is important.

11 I will recommend that he be designated to a BOP
12 facility, Fort Dix or another facility that is able to address
13 appropriate treatment for mental health. And while getting
14 effective treatment might be more readily available outside of
15 prison, there is no guarantee he'll obtain that treatment. And
16 in any event, the other purposes of sentencing outweigh the
17 need for treatment in the near future, given the seriousness
18 and nature of the criminal conduct.

19 Ultimately, weighing those considerations, I believe
20 that a sentence of 27 months, which is in the guideline range,
21 is sufficient, but not greater than necessary, to serve the
22 purposes of sentencing, followed by three years' supervised
23 release.

24 I'd like to give the parties a chance to state any
25 legal objection to that sentence before I impose it.

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1 MS. BAGLIEBTER: No objection, your Honor.

2 MR. JOSEPH: No.

3 THE COURT: Mr. Joseph, you are hereby committed to
4 the custody of the Bureau of Prisons for 27 months on both
5 counts concurrent. Following release, you will be on
6 supervised release for 3 years, again, on both counts
7 concurrent, with the following conditions:

8 You will not commit another federal, state, or local
9 crime. You will not possess or use an illegal controlled
10 substance. You will submit to one drug testing within 15 days
11 of placement on supervised release, and at least the two
12 thereafter as directed by the probation officer. You will
13 cooperate in the collection of DNA as directed by the probation
14 officer.

15 The standard conditions are imposed with the following
16 special conditions:

17 You will submit your person, any property, residence,
18 vehicle, papers, computer, other electronic communications,
19 data storage devices, cloud storage or media and effects to a
20 search by any United States probation officer, and, if needed,
21 with the assistance of any law enforcement. The search is to
22 be conducted when there is reasonable suspicion concerning
23 violation of a condition of supervision or unlawful conduct by
24 the person being supervised. Failure to submit to a search may
25 be grounds for revocation.

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1 You will provide the probation officer with access to
2 any requested financial information. You will not incur any
3 new credit charges or open additional lines of credit without
4 the approval of the probation officer unless you are in
5 compliance with the payment schedule.

6 You will participate in an outpatient substance abuse
7 treatment program approved by the probation office, which may
8 include testing to determine whether you've reverted to use of
9 drugs or alcohol. You'll also participate in a mental health
10 treatment program approved by the probation office, and you
11 will continue to take any prescribed medications unless
12 otherwise instructed by the health care provider.

13 You will report to the nearest the probation office
14 within 72 hours of release. You will be supervised by the
15 district of your residence.

16 I'm not imposing a fine because I find you are not
17 able to pay a fine. However, there is a mandatory special
18 assessment of \$100 for each count, for a total of \$200, which
19 is hereby imposed.

20 Mr. Joseph, you pled guilty and I accepted your plea.
21 However, do you have a right to appeal from your conviction and
22 sentence and I want to advise you of that right. You do have
23 the right to appeal from your conviction and sentence, except
24 to the extent you have waived that right as part of your guilty
25 plea and by pleading guilty. If you cannot pay the cost of an

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1 appeal, you may apply for leave to appeal without payment of
2 any costs. Any appeal must be filed within 14 days.

3 I'll make a recommendation to the Bureau of Prisons
4 that you be designated to Fort Dix or other appropriate
5 facility that has appropriate treatment, and the BOP makes the
6 ultimate determination. I can only make a recommendation.

7 Is there anything further from -- I wanted to ask
8 about restitution, if the government wanted to address that.

9 MS. BAGLIEBTER: Your Honor, there is no restitution
10 at this time. The victims have been notified, but we have not
11 received any restitution requests.

12 THE COURT: Anything further from the government?

13 MS. BAGLIEBTER: No, your Honor. Because the
14 defendant pled open to the indictment, and there are no prior
15 indictments, there's no underlying indictments or open counts.
16 So no, your Honor.

17 THE COURT: Anything further, Mr. Joseph?

18 MR. JOSEPH: No.

19 THE COURT: Thank you. We are adjourned.

20 (Adjourned)
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25